

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMARR MURPHY-ELLERSON,

Petitioner,

Case Number: 15-14423
HONORABLE AVERN COHN

v.

STEVEN RIVARD,

Respondent.

ORDER OF DISMISSAL

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner Lamarr Murphy-Ellerson, a state prisoner, filed a *pro se* petition for a writ of habeas corpus challenging his convictions for two counts of assault with intent to murder, two counts of assault with intent to do great bodily harm less than murder, possession of a loaded firearm in a vehicle, discharge of a firearm from a motor vehicle, possession of a firearm during the commission of a felony, discharge of a firearm toward a dwelling or occupied structure, and carrying a concealed weapon. As will be explained, the petition is duplicative of an earlier filed petition pending in this district. Therefore, the instant petition will be dismissed.

II.

"[A] suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions." Serlin v. Arthur Andersen & Co., 3 F.3d 221, 223 (7th Cir. 1993) (internal quotation marks and citations omitted). A district court

may dismiss a habeas petition when it is duplicative of a pending habeas petition. See Davis v. U.S. Parole Commission, No. 88-5905, 1989 WL 25837 (6th Cir. 1989); Marks v. Wolfenbarger, No. 2:06-cv-14325, 2006 WL 2850340, *1 (E.D. Mich. Oct. 3, 2006).

Here, approximately one month before the instant petition was filed, Petitioner filed a petition in this district. See Murphy-Ellerson v. Rivard, No. 2:15-cv-14103. This first-filed petition challenges the same convictions challenged in the pending matter and is identical in substance to the instant petition. The instant petition is therefore duplicative of the earlier-filed petition and must be dismissed.

III.

Accordingly, the petition is DISMISSED WITHOUT PREJUDICE. Reasonable jurists would not debate the Court's decision that the petition is duplicative of an earlier-filed petition and should be dismissed on this basis. The Court therefore DECLINES to grant a certificate of appealability under 28 U.S.C. § 2253(c)(2). See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 29, 2016
Detroit, Michigan